

ENTERED ON
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CHAPTER 11
)
GOLD RUSH II, INC.,) CASE NO. 05-60412 - MHM
)
Debtor)
)

POINT CENTER FINANCIAL, INC., a)
California corporation, FOR)
THE BENEFIT OF JOHN EDWARD)
BELT and KAREN BELT, TRUSTEES)
OF THE JOHN EDWARD and KAREN)
BELT TRUST, ENROLL CHENEY and)
JANELLE CHENEY, TRUSTEES)
OF THE FAMILY OF ENROLL A,)
WILLIAM CODY and MONICA Q. CODY,)
EDWIN D. COOPER, TRUSTEE OF)
THE EDWIN D. COOPER TRUST,)
WILLIAM E. DENNISON AND/OR TERESA J.)
DENNISON, TRUSTEES OF THE DENNISON)
FAMILY TRUST, MELVIN P. DEUTSCH and)
GAIL D. DEUTSCH, GERALD R. DOOHER,)
EDWIN D. COOPER, TRUSTEE OF)
THE EDWIN D. COOPER IRREVOCABLE)
CHARITABLE REMAINDER UNITRUST,)
ROBERT B. GLYNN, RICHARD O.)
GODMERE, TRUSTEE OF THE EVELYN K.)
GODMERE FAMILY TRUST, PENSICO)
TRUST COMPANY, AS CUSTODIAN OF)
IRA#MC283 FBO DIANE MCGOWEN,)
THE LEVIN SECURITIES FAMILY)
LIMITED PARTNERSHIP, a Florida limited)
partnership, CITY NATIONAL BANK AS)
CUSTODIAN FOR THE LORRELL SMICK)
MONEY PURCHASE PLAN #1180-1271,)
HELEN MURADIAN, NATIONAL)
FINANCIAL LENDING, LLC, a California)
limited liability company, JESUS RAMIREZ)

AND CAROLINA RAMIREZ, TRUSTEES)
 OF THE JESUS RAMIREZ AND CAROLINA)
 RAMIREZ 1985 REVOCABLE TRUST,)
 CHARLES REDNOR and JOAN REDNOR,)
 FRANCIS L. RYAN, TRUSTEE OF THE)
 FRANCIS L. RYAN TRUST, JIM)
 SPRADLING and HELEN SPRADLING,)
 TRUSTEES OF THE SPALDING FAMILY)
 TRUST, STEPHEN J. STRIEGEL AND)
 HELENE MURADIAN, TRUSTEES OF)
 THE TRUST OF STEPHEN J. STRIEGEL,)
 JAMES L. THACKER and SILVIA K.)
 THACKER, TRUSTEES OF THE THACKER)
 FAMILY LIVING TRUST, MONTANA)
 DREAMS, LLC, a Delaware limited liability)
 company,)
)
 Movant,)
)
 v.)
)
 GOLD RUSH II, INC., a Georgia)
 corporation,)
)
 Debtor/Respondent.)

**ORDER GRANTING POINT CENTER FINANCIAL, INC.'S
 MOTION FOR RELIEF FROM AUTOMATIC STAY
 AND ORDER DISMISSING CASE**

Hearing was held August 15, 2005, continued to September 14, 2005, October 3, 2005,
 and October 17, 2005, and concluded October 24, 2005 (collectively, the "Hearings") on the
 emergency motion of Point Center Financial, Inc. ("Point Center"), Debtor's primary secured
 creditor, seeking relief from the automatic stay of 11 U.S.C. §362(a), or, in the alternative,
 seeking to convert this Chapter 11 case to one under Chapter 7. At the Hearings, both testimonial
 and documentary evidence was introduced, and arguments were heard and considered from

counsel for Point Center, John G. Aldridge, Jr.; counsel for Mukesh Shretta ("Mr. Shretta"), Louis G. McBryan; and counsel for Debtor, Bruce Z. Walker. Additionally, briefs of law and fact were filed by attorneys for Debtor and Point Center on behalf of their respective clients.

Debtor owns and operates a nightclub known as Vegas Nights, located at 1830 Cobb Parkway South, Marietta, Cobb County, Georgia 30060 (the "Property"). The Property consists of 3.64 acres of real property, a commercial building of 22,192 square feet, furniture, fixtures and equipment, nightclub furnishings, liquor and business licenses, inventory, trade name and goodwill. Debtor has 37 employees.

In June 2004, Kimberly and Patrick Olmstead acquired the stock of Debtor from Mukesh Shretta. To finance the purchase of the stock, Debtor borrowed \$3.9 million from Point Center. The Point Center loan was secured by a first priority lien on the Property. Mr. Shretta holds a note for \$2.545 million secured by a second priority lien on the Property.

Prior to 1992, an automobile dealership operated on the Property and in connection with that business, underground storage tanks had been installed on the Property. In 1992, those tanks were removed, but the surrounding soil had been contaminated by the environmentally hazardous substances – gasoline, motor oil and waste oil – which had been stored in the tanks. That contamination, which persists today, was discovered in April 2004, prior to the loan from Point Center. The cost of the environmental cleanup of the Property is estimated to be at least \$75,000 and as much as \$100,000.

In connection with the sale and the loan from Point Center, Debtor and Point Center executed an Environment Indemnity Agreement (the "Indemnity Agreement"), in which Debtor agreed to indemnify Point Center for the presence and cleanup of the contamination. Also in

connection with the sale, and as an inducement to Point Center to lend the funds to Debtor, Debtor and Mr. Shretta entered into a written contract, the Environmental Remediation Agreement, in which Mr. Shretta agreed to pay the costs for the environmental cleanup of the Property (the "Cleanup Agreement"). Debtor also represented to Point Center that an escrow account for the environmental cleanup had been created. Less than two weeks after the Point Center loan transaction closed, without notice to or the consent of Point Center, Debtor terminated the Cleanup Agreement with Shretta in return for the reduction of the purchase price by \$25,000. Debtor's proposed Chapter 11 plan contains no specific provision for environmental cleanup of the Property.¹ Although Debtor is apparently not responsible for the environmental cleanup under state or federal environmental protection laws, a representative of the state environmental protection agency testified that the extent of the contamination and the paucity of funds available to the state for cleanup operations will result in a significant delay of two years or more before the state could undertake elimination of the contamination.

Debtor contends Point Center's claim is adequately protected by an equity cushion in the Property. The parties, however, do not agree on the fair market value of the Property. Point Center presented expert testimony on the Property's value. Debtor presented the testimony of Debtor's principal. Debtor challenged Point Center's expert's conclusion of value because his evaluation was based solely on comparable properties and failed to employ an income approach analysis. Although the opinion and written report of Point Center's expert did not include the income approach, during the Hearings, the expert reviewed Debtor's operating reports regarding

¹ Debtor's disclosure statement does contain a limited discussion of the environmental issues but suggests that Debtor will undertake cleanup only to the extent it is required by law to do so. Subsequent testimony at the Hearings established that Debtor has no such obligation.

income and expenses and opined that employing the income approach to value the Property would yield a negative value. Additionally, the expert stated he had not considered the environmental problems in reaching his opinion regarding value. On the issue of the fair market value of the Property, Point Center's expert is credible and, given the facts and circumstance of this case, the expert's testimony of value at \$4.5 million is reasonable. A deduction from that amount of \$75,000 - \$100,000 to reflect the diminution in value caused by the environmental problems results in a fair market value for the Property of \$4.4 - \$4.425 million.

Point Center also asserts that, since the bankruptcy petition was filed, Debtor's principals have engaged in mismanagement and misconduct. Specifically, postpetition, Debtor engaged Mr. Shretta to provide certain promotional services, which include engaging celebrity personalities to appear and/or perform at Vegas Nights. In return, Mr. Shretta collects from Debtor's customers a cover or "door" charge from which Shretta retains a substantial portion, 50%, and turns over the remainder to Debtor. Debtor contends that such promotional arrangements are common in nightclubs, that the promoter usually retains 100% of the "door," and that the transactions with Mr. Shretta do not constitute misconduct or mismanagement. Debtor's more recent operating reports show, however, that Debtor has consistently overestimated income and underestimated its expenses. Although Debtor has proposed a plan of reorganization, Debtor was unable to present sufficient or persuasive evidence to establish a reasonable likelihood that its reorganization would be feasible or successful.

Debtor's prepetition and postpetition decisions, which include eliminating Mr. Shretta's obligation to correct the Property's environmental problems, together with the promotional mechanism with Mr. Shretta that effectively serves to provide Mr. Shretta additional income from


the Property, follow the same theme of money management and is detrimental to Point Center's interests in the Property. Point Center has a first lien position on the Property. Debtor should be managing its business without such integral assistance from the former owner, whose favored treatment by Debtor raises the spectre of a lack of the good faith and fair dealing with the major creditor essential to good management, and provides convincing evidence that this case was filed and has been prosecuted in bad faith. The timing surrounding the execution of the Cleanup Agreement and its termination, without notice to Point Center, suggests that Debtor and Mr. Shretta may have colluded to deceive Point Center so that Debtor could obtain the loan. Debtor has now essentially repudiated its intent to undertake the environmental cleanup of the Property.

Debtor's bad faith, together with the failure to provide sufficient evidence of a reasonable prospect for successful reorganization and a lack of adequate protection for Point Center, provides sufficient grounds to grant Point Center relief from the automatic stay and to dismiss this case. *See State Street Houses, Inc.*, 356 F. 2d 1345 (11th Cir. 2004); *In re Albany Partners, Ltd.*, 749 F. 2d 670 (11th Cir. 1984); *In re Phoenix Piccadilly, Ltd.*, 849 F. 2d 1393 (11th Cir. 1988); *Natural Land Corp. v. Baker Farms, Inc.*, 825 F. 2d 296 (11th Cir. 1987). Although the facts and circumstances of this case do not present the classic single-asset real estate case filed to frustrate the secured creditor pursuit of its rights, the facts and circumstances do show that, less than a year after enticing Point Center, by deceptive promises, to lend money to Debtor, Debtor filed a bankruptcy petition with the primary purpose of restructuring the debt to Point Center. Therefore, based on Debtor's bad faith and Debtor's lack of any realistic expectation of reorganization, it is hereby:

ORDERED that Point Center's Emergency Motion is **GRANTED**; the automatic stay of 11 U.S.C. § 362(a) is modified to allow Point Center, its successors, and its assigns regarding the Property commonly known as Vegas Nights, to proceed to assert its rights, including but not limited to the institution, advertisement for and completion of foreclosure proceedings; the assessment of reasonable legal fees and costs related thereto; and the assertion of any and all of its respective rights and remedies under applicable law as to its collateral, including possessory rights. It is further

ORDERED that this Chapter 11 case is **DISMISSED**.

IT IS SO ORDERED, this the 28th day of November, 2005.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE

DISTRIBUTION LIST

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